

Representation at work



booklet

inform

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work
with you

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About this guide

Most people assume that they know what representation means and how it works in practice, but how many of us have experience of acting as an employee representative or working closely with them?

For example, did you know:

- there are nine different kinds of employee representatives (some union and some non-union) – including representatives for health and safety, consultation, pensions, collective bargaining and union learning?
- representation can mean anything from communicating basic information to employees through to more complex negotiation over collective bargaining?
- the most common arrangement for consulting employee representatives is the employee forum – also known as a joint consultative committee, staff council or works council?

This guide is aimed at employers, employee representatives and employees. It explains how employers and employee representatives can get the most out

of working with each other and focuses on four areas:

- the **issues** employee representatives get involved in at work – such as individual disciplinary and grievance hearings and collective bargaining on pay and conditions
- the **skills** they need to do their job – ranging from listening skills to negotiating skills
- the **rights** they have under law – such as the right to reasonable time off to do their jobs
- the **mechanics** of how they do their job – in other words, what kind of meetings they attend and how consultation and negotiation work in practice.

Small firms don't need elaborate systems of representation, but it is good practice for firms of all sizes to have an effective way of informing and consulting their employees.

More specialist advice on the rights to time off, training and facilities can be found in the Acas guides *Trade union representation in the workplace* and *Non-union representation in the workplace*, available at www.acas.org.uk.

Glossary of terms

Throughout this guide we will be using the following terms:

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Communication	<p>Employee communications means the provision and exchange of information and instructions which enable an organisation to function efficiently and employees to be properly informed about developments. It covers:</p> <ul style="list-style-type: none">• the information to be provided• the channels along which it passes• the way it is communicated.
Consultation	<p>Consultation is the process by which management and employees or their representatives jointly examine and discuss issues of mutual concern. It involves managers actively seeking and then taking account of the views of employees, either directly or through their representatives, before making a decision. Meaningful consultation depends on those being consulted having adequate information and time to consider it, but it is important to remember that merely providing information does not constitute consultation.</p>
Negotiation	<p>Negotiation usually takes the form of a dialogue between employers and employee representatives aimed at producing an agreement. Negotiation is often associated with resolving disputes or reaching agreements on collective workplace issues.</p>
Employee forums	<p>Employee forums are permanent bodies set up so that representatives of employers can consult with representatives of employees in order to listen to their views and take them into account when making decisions.</p> <p>The most common arrangement for consulting employee representatives on workplace issues is the employee forum. They are also known as joint consultative committees, staff councils and works councils.</p>

<p>Collective bargaining</p>	<p>Collective bargaining is a process whereby an employer and a recognised trade union or unions negotiate on pay and other terms and conditions of employment. This negotiation is carried out on behalf of a group of workers defined as 'the bargaining unit'.</p>
<p>Trade unions</p>	<p>Trade unions are organisations of workers which aim to maintain and improve the terms and conditions of work of their members. They try to achieve this mainly through collective bargaining with employers and through the provision of benefits to their members.</p> <p>Traditionally trade unions drew their members from workers in specific trades or industries but many unions have extended membership to other groups of workers either through amalgamation or by widening their membership base. The 2004 Workplace Employee Relations Survey found 50% of employee's work in an establishment with a recognised trade union.</p>
<p>Recognition</p>	<p>A trade union is said to be recognised when an employer agrees to negotiate with it on pay and working conditions on behalf of a particular group of workers.</p> <p>Once a union becomes recognised, the employer must comply with certain legal duties. The most common way a union can gain recognition for collective bargaining purposes is by the employer simply agreeing to recognise it voluntarily. In practice this means the union becomes recognised by the employer without using any legal procedures.</p> <p>If an employer and trade union find they are unable to come to a voluntary recognition agreement, a trade union can make an application for statutory recognition. This only applies where the employer, together with any associated employers, employs 21 or more workers.</p>

What is *representation?*

Representation at work is the system by which individual employees – either union or non-union representatives – are given the right to speak on behalf of their colleagues on important issues in the workplace. Representation is a way of formalising the employer-employee relationship by establishing channels for people at work to:

- share information
- communicate
- consult
- negotiate
- protect their employment rights
- build positive relationships based on trust and co-operation.

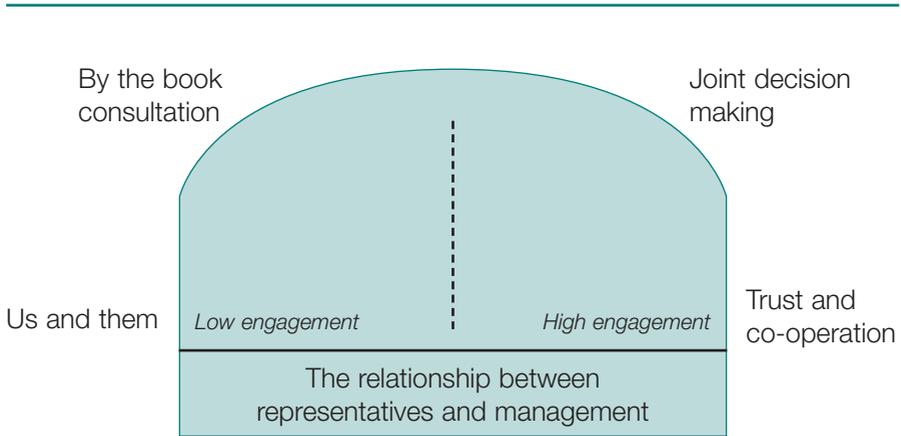
Representatives are usually elected and they have many rights which are protected by law – such as the right to training and reasonable time off to carry out their duties their duties see the Acas guides *Trade union representation in the workplace* and *Non-union representation in the workplace* at www.acas.org.uk/publications.

Representation is most commonly used for:	The law says:
<p>Individual issues, where an employer and employee need to discuss often sensitive issues. For example, an employee may have a complaint with their manager about bullying or discrimination, or a manager may feel an employee's performance or conduct is falling below the required standard.</p>	<p>Workers have a statutory right to be accompanied by a fellow worker or trade union official at disciplinary or grievance hearings.</p>
<p>Group issues, when employers need to communicate and consult with the whole workforce. This is often done in employee forums – also known as joint consultative committees or works councils.</p>	<p>Employers are required to consult employee representatives on many issues including:</p> <ul style="list-style-type: none"> – collective redundancies – health and safety – transfer of undertakings.
<p>Collective bargaining, related to the terms and conditions of employment, where negotiation often takes place between senior management and union representatives on an ongoing basis.</p>	<p>Recognised trade unions have the legal right to bargain about pay, hours and holidays.</p> <p>Most agreements by employers to recognise trade unions for collective bargaining are entirely voluntary.</p>
<p>Change issues, for example where new products have to be developed or new equipment introduced as a result of economic circumstances.</p>	<p>The Information and Consultation of Employees (ICE) Regulations were introduced on 6 April 2005 and give all employees of businesses with 50 or more employees the right to request an information and consultation agreement.</p>

The benefits of employee representation

The key benefit of representation is that it enables employers and employees to communicate, consult and negotiate effectively with each other. As the diagram shows, involving employee representatives can:

- give employees a **voice**: having representatives can encourage employees to voice their views frankly and freely. In the absence of representatives to speak for them, employees may be reluctant to express their true opinions directly for fear that managers might interpret their comments as criticism and therefore hold this against them
- nurture **good employment relations**: employee representatives can act as a useful sounding board for management on plans they have for the organisation and as a barometer of the level of trust and cooperation between employees and managers. Representatives can be particularly effective identifying grievances in the workplace and helping to diffuse potential conflict at an early stage
- make **negotiations** more effective: trained representatives can make well thought out recommendations to collective negotiating bodies that have the backing of the employees they represent and reflect the wider interests of the company



Representation: the barometer of employment relations

- drive **employee engagement**: the recent Macleod Review found that one of the main drivers of employee engagement is “employees feeling they are able to voice their ideas and be listened to, both about how they do their job and in decision-making”

“Employee engagement is a combination of commitment to the organisation and its values plus a willingness to help out colleagues”

The Chartered Institute of Personnel Development

- improve **change management**: employee representatives can play an important role in developing joint decision-making. Acas advisers often work with organisations to help run workshops based on solving problems during periods of change. See the Acas guide *How to manage change* at www.acas.org.uk for further advice
- raise **creativity**: effective representation can help employers tap into the expertise and creativity of their employees. The decisions you make are also going to be much more welcome if employees feel they have had a genuine chance to have their views heard

- promote **employee health and wellbeing**: research by the Health and Safety Executive has shown that one of the main causes of stress at work is a lack of control over how employees do their job. Having a say in the decision-making process is especially important during periods of instability or rapid change. See the Acas guide *Health, work and wellbeing* at www.acas.org.uk for further advice

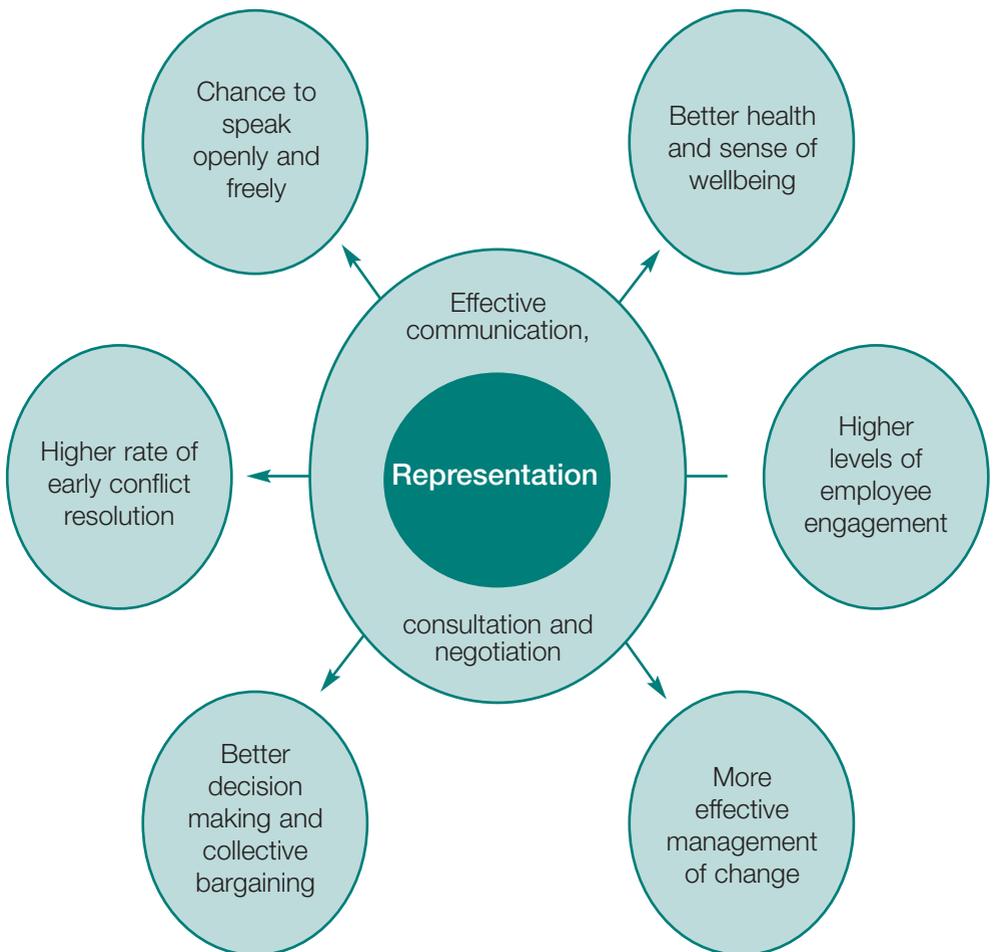
- develop **skills**: employee representatives and managers can develop useful skills, such as in negotiating and handling group dynamics, particularly if they receive the right level of training.

Representation does not mean that employers and managers should not talk directly with individual employees or consult with them. This one-to-one dialogue, particularly between line managers and their staff, is very important in motivating and engaging employees.

Ideally, line managers will have a good rapport with their staff and know how they are feeling and the issues that most concern them (for further information see the Acas guide *Front line managers* at www.acas.org.uk).

Managers should be careful that this direct involvement with employees does not undermine any formal negotiating procedures that might be in place. For example, a manager should not report to an established

negotiating forum that “I’ve already sorted this issue out with the staff”. There’s no harm in sounding out opinions but stick to the agreed decision-making process.



Who are employee representatives?

Employees can be represented by:

- trade union representatives where there is a recognised trade union. Many employers reach agreements with their workforce to recognise trade unions, and Acas can help organisations with voluntary recognition arrangements. If a voluntary agreement cannot be reached a trade union may invoke the statutory recognition procedure in organisations with 21 or more employees (see Appendix for more information)
- non-union representatives – who make up approximately half of the representatives in the UK and whose role tends to be focused on consultation
- a mixture of union and non-union representatives.

Many employers use a constituency-based approach to ensure representatives reflect the individual circumstances and structure of the organisation. For example, if there are 200 employees divided into five major groups or units, each doing different jobs, there may be a need for a minimum of five representatives – one for each group.

Representatives can be elected on the basis of:

- **occupational group** or function (eg production, warehouse, office)
- **shift patterns** (constituencies of night and day shift workers, for example)
- **department**, perhaps with one representative per section
- **geographical area**.

Representatives should also reflect the gender and race of your workforce. This can help to promote diversity and ensure equality of opportunity for all your employees (for further information see the Acas guide *Delivering equality and diversity* at www.acas.org.uk/publications).

What kind of employee representatives are there?

Type of representative	Rights
<p>Union representatives appointed by an independent union in workplaces where the union is recognised for collective bargaining purposes. These can also include specialist representatives for:</p> <ul style="list-style-type: none"> • union learning • health and safety • equality issues • information and consultation • pensions • transfer of undertakings (TUPE) • collective redundancy • workforce agreements. 	<p>Many of these union representatives have legal rights – for example, the right to paid time off to carry out their duties and training.</p> <p>For a full list of these rights see the Acas guides <i>Trade union representation in the workplace</i> and <i>Non-union representation in the workplace</i> at www.acas.org.uk/publications.</p>
<p>Non-union representatives include specialist employee representatives for:</p> <ul style="list-style-type: none"> • employee safety • information and consultation • pensions • transfer of undertakings (TUPE) • collective redundancy • workforce agreements. 	

How are employee representatives elected?

The law does not state how many representatives you must elect or the exact process for choosing them. However, when arranging to elect employee representatives, it is good practice to:

- ✓ make sure that the election is fair
- ✓ work out the number of representatives to be elected so that there are enough representatives to represent the interests of all the affected employees
- ✓ determine the employee representatives' term of office so that it is long enough to enable relevant information to be given and consultations to be completed
- ✓ ensure that the candidates for election as employee representatives are affected employees on the date of the election

- ✓ ensure that no affected employee is unreasonably excluded from standing for election

- ✓ ensure that all affected employees on the date of the election are entitled to vote for employee representatives

- ✓ take all reasonable steps to enable those voting do so in secret, and the votes given at the election are accurately counted.

Where there is a recognised trade union, the election or nomination of representatives will be organised by the trade union concerned. For a list of trade unions visit the TUC website at www.tuc.org.uk.

What makes for effective *representation?*

Effective representation is dependant upon:

1. **the qualities of employee representatives** – including communication and listening skills and the ability to empathise with colleagues
2. **good management** – whereby employers develop strong relationships with employee representatives based on mutual interests
3. **ongoing training and self-development** for representatives.

Qualities of employee representatives

Representatives work very closely with employees on often very personal and sensitive issues. The last Workplace Employment Relations Survey¹ reported that two thirds of representatives spent time on:

- **welfare issues**, such as equal opportunities, health and safety, absence and staff sickness, and
- **disputes** involving disciplinary and grievance matters.

In order to be effective in relating to individual problems representatives need to have:

- **integrity** – employees need to be able to trust their representatives and talk to them in confidence about issues such as personal illness, personality clashes and bullying
- **good communication skills** – this includes listening as well as talking. At meetings it often means being able to present arguments concisely and in a measured way
- **knowledge of the law** – which means keeping up-to-date with the law on everything from equality and discrimination to handling redundancies.

Representatives may also need to get employees involved on issues affecting wider groups in the organisation, such as pay and terms and conditions of employment. They need to be known to their constituents, share views and information and be aware of the need for confidentiality.

What do managers need to do?

Representatives can act as useful sounding boards for managers who want to canvas opinion on specific ideas or gauge the mood of the workforce. This kind of relationship between managers and representatives involves trust and mutual confidence in each other's commitment to the interests of the organisation and its employees.

Managers need to involve representatives wherever possible in wider business issues in order to develop this trust. It is in their interests to ensure that representatives have:

- a genuine desire to see their company do well
- an awareness of the commercial environment, where appropriate
- an understanding of the bigger picture – in terms of organisational objectives and business plans.

In order to achieve these goals managers should:

- provide relevant, timely information to employees and representatives on key workplace issues
- consult in good time
- explain reasons for decisions
- agree meaningful agendas at meetings
- allow representatives sufficient time and facilities.

Representatives and managers should work out a written agreement on the arrangements for time off, training and facilities. This can help avoid confusion and minimise disputes – especially where a permanent employee forum has been set up.

The agreement should also agree upon the number of representatives and how they will be elected. For more information see the Acas guides *Non-union representation in the workplace* and *Union representation in the workplace* available at www.acas.org.uk/publications.

Misunderstandings between managers and employee representatives can be caused by a lack of awareness on the part of line managers of the role employee representatives play in helping employees with individual rights' issues. Training and involvement in joint working groups (see p23) can help overcome this barrier.

Trade union representatives

Trade unions provide training for their own representatives. This is often organised by the TUC – for more information visit www.unionlearn.org.uk.

Training and self-development

Representatives may need training to help deal with:

- **specific issues** – such as health and safety or TUPE
- **detailed consultation**, where meetings can last for several months and in-depth knowledge is required on complex business matters
- **alternative dispute resolution procedures** – such as mediation for dealing with individual disciplinary and grievance issues
- **negotiation** in collective bargaining
- **meetings**: everything from writing reports to presenting to groups of managers.

Acas research has found that “experience, training and legal expertise” are the key building blocks for effective representation. The Acas report – *Accompaniment and representation in workplace discipline and grievance* – highlighted the link between experience and the willingness on behalf of union representatives to deal with problems on an informal basis.

Experience is not always enough on its own. Employee representatives also need to focus on their own self-development to help them become:

- **assertive** rather than passive or aggressive. A confrontational approach can often alienate people before they have the chance to even consider the issues
- **practical** rather than ideological. A good representative can often point out the implications of an employee’s course of action at a grievance or disciplinary meeting. This is often more helpful than trying to establish ‘rights’ and ‘wrongs’
- **confident** rather than egotistical. Workers want an employee representative who will listen to their views and represent these fairly on their behalf. They do not want representatives who go into meetings to fight their own personal battles or promote their own positions.

How does representation work in practice?

According to *Reps in Action*, a joint publication by the Confederation of British Industry, the Trades Union Congress and the Department for Business, Innovation and Skills, there are approximately 200,000 workers who act as lay union representatives. These representatives have the right to collective bargaining with employers over issues such as pay, hours and holidays.

Along with non-union representatives, they also help:

- **individuals manage personal issues**, such as discipline and grievances issues
- **employers communicate and consult** with employees on issues such as health and safety, transfer of undertakings and redundancies
- **resolve problems through joint working parties** on issues like absence and change management.

Representation of individuals on personal issues

At some time or other, most employers have had to talk to an employee about:

- **disciplinary matters**, for example, if an employee is alleged to have broken one of the company rules covering absence, timekeeping, misconduct, unsatisfactory performance or the use of organisational facilities
- **grievance issues**, for example, if an employee has a problem about their work, working conditions or relationships with colleagues that they wish their manager to resolve.

These interviews can be very stressful for the manager and the employee. The manager can be tempted to brush over serious underlying problems in an attempt to get things 'back to normal' or they might over-react in a manner that exacerbates the problem.

Checklist for the statutory right to be accompanied:

- ✓ Applies to all workers including those who perform work personally for someone else, but are not genuinely self-employed
- ✓ Applies to certain disciplinary and grievance hearings which may result in some disciplinary action or where the grievance is about the employer's duty to the worker
- ✓ The worker must make a request to be accompanied to the employer and the request must be reasonable
- ✓ The worker may choose to be accompanied by a co-worker or a trade union official (full-time or lay)
- ✓ Where the chosen companion cannot attend on the date proposed the worker can offer an alternative time and date which is reasonable and within five working days – beginning with the first working day after the day proposed by the employer
- ✓ The accompanying person can address the hearing and confer with the worker, but not answer questions on behalf of the worker unless this is agreed by management
- ✓ Refusing to allow a worker to be accompanied could lead to a finding of 'automatically unfair' dismissal if the worker is dismissed as a result of the disciplinary hearing and makes a claim of unfair dismissal to an employment tribunal.

Employees may be anxious about 'being in trouble' and nervous about expressing their opinions in front of more senior staff.

Representatives can help to take some of the emotion out of these encounters by acting as an intermediary. They can also help maintain ongoing relationships that might otherwise be damaged by conversations that can sometimes turn into confrontations.

Many organisations recognise the benefits of employee representation and provide rights over and above the legal minimum (see table above). They allow workers to be accompanied by a person of their choice at interviews, meetings or hearings on a range of disciplinary, grievance or other issues.

But what do these representatives, friends or work colleagues do at the meetings and how do they help resolve disputes?

Acas research² has shown that workplace companions can offer a useful source of support to employees in disciplinary and grievance settings. Even in a very small firm where everyone knows one another and the accompanying employee has no training there can be subtle, but significant benefits. The report describes one companion who:

"...attempted to advise her colleague before the meeting, but remained silent during the meeting itself. However she had some experience of HR issues from a previous job and therefore was able to explain to the employee that she was not being sacked and that if she improved her behaviour she would keep her job. The companion felt that this persuaded the employee against resigning following the disciplinary."

This example shows that when emotions are running high people can often misinterpret what is going on in a meeting. The accompanying employee was able to persuade the employee not to leave and give her a more realistic, neutral assessment of the situation.

Trade union representatives can provide:

- ✓ early warning of potential problems
- ✓ a communication channel between managers and employees
- ✓ ongoing monitoring of employees involved in discipline and grievance issues
- ✓ effective advocacy of individual cases to ensure fairness
- ✓ a way of managing employee expectations
- ✓ good awareness of legal and procedural issues.

Accompaniment and representation in workplace discipline and grievance, Acas Research paper

The research also found that trade union representatives offer even greater help, often playing a positive role in tackling disputes in the informal stage. A line manager describes the impact a union representative can have:

“I’ve had first-hand experience of delicate issues of bullying going off in a department that the people were not dealing with, but they spoke to the union rep, the union rep comes to see me as line manager responsible for this area at the time, saying, ‘This is bubbling up, and so and so is getting upset about it.’ Then you can get engaged and avoid what would’ve been some serious allegations and issues.”
(Operational manager)

In this example, the union representative is proving the maxim that ‘prevention is better than cure’ and offering the line manager early warning of potential problems. Bullying and harassment are not uncommon in workplaces and can lead to stress and mental health problems as well as high employee turnover and employment tribunal claims.

Communication and consultation on issues such as health and safety, TUPE and redundancies

Employers are legally obliged to consult with employees on a range of issues, including transfer of undertakings, health and safety and planned redundancies. Employers and employee representatives commonly set up permanent consultative bodies – often called employee forums, joint consultative committees or work councils – for this purpose.

The remit for these groups – in terms of what they discuss and how decisions are made – varies from one organisation to the next. Some organisations consult on those issues required by law, others widen the group’s responsibility to cover anything from working conditions to training and equal opportunities.

How to get the best from employee forums

<p>Purpose</p>	<ul style="list-style-type: none"> • A forum's terms of reference should explain its objectives – which often include a commitment to promoting cooperation and mutual understanding through consultation. Specific objectives can be linked to the organisation's business plan, mission or core values.
<p>Representation</p>	<ul style="list-style-type: none"> • Worker representatives on councils should be elected by the employees they will represent. Where an organisation has an established trade union structure one or more union representatives may sit on the council as of right or, alternatively, a separate election could be run and union representatives may still be candidates for those positions. • Workers may be elected on a constituency basis, irrespective of their trade union role or membership. • It is usual for management to nominate management representatives.
<p>Constitution</p>	<ul style="list-style-type: none"> • The constitution should lay down the rules and procedures of the employee forum, including terms of reference, period of office, election of members, facilities for members, rules of confidentiality etc.
<p>Members</p>	<ul style="list-style-type: none"> • The number of representatives on a forum is typically between 5 and 15 but this will depend on the size and make-up of your organisation.
<p>Chair</p>	<ul style="list-style-type: none"> • A good chair allows everyone to contribute to discussions but does not allow meetings to drift from the subject. In some organisations the role of chair alternates between suitable management and employee representatives.
<p>Training</p>	<ul style="list-style-type: none"> • Training in interpersonal and group dynamics along with briefing on any relevant legislation, can help groups be much more effective.

How to get the best from employee forums

Time off and facilities	<ul style="list-style-type: none"> • Set out the arrangements for time off (with pay) and facilities to be provided (such as use of phone/computer/stationery etc.
Meetings	<ul style="list-style-type: none"> • Four meetings a year with the provision for ad hoc meetings may be reasonable but this will vary.
Subjects to discuss	<ul style="list-style-type: none"> • Some issues commonly discussed include: working conditions, company prospects and strategies, new ways of working, training, health and safety, equal opportunities, staff levels and welfare.
Agenda	<ul style="list-style-type: none"> • If meetings take longer than two hours, concentration and quality of debate may suffer.
Secretary	<ul style="list-style-type: none"> • A secretary will need reasonable time off, facilities and training to arrange meetings, and take and distribute minutes. In larger organisations there may be management and employee side secretaries who liaise about administration matters such as agendas.

Many organisations have specialist representatives to represent employees on:

- health and safety
- pensions
- european consultative bodies.

The legal requirements to consult on each of these issues are set out in Appendix, p31. Most of these specialist representatives have the legal right to paid time off to carry out their duties. Some also have the right to paid time off for training and the provision of facilities to help them perform their duties.

Training can be invaluable in making the consultation process effective. The following case study shows how training can improve communication between managers and representatives and help the decision-making process.

Case study: How Vodafone used training to make consultation over planned redundancies more effective

The background

In March 2009 it was announced that around 400 people were either to be made redundant from Vodafone's Newbury headquarters or re-deployed elsewhere in the business, as part of company-wide restructuring and cost savings.

At the time, Vodafone employed around 10,500 people in the UK and an estimated 70,000 world-wide.

Designing the consultation process

Vodafone had an elected employee consultative council (established in 2004) which included 16 employees located across the UK, and met quarterly to discuss the business direction of Vodafone. However, when facing redundancies, the company opted to hold an election to appoint employee representatives to participate in management/employee consultation specifically for the period of the redundancy.

The manager believed that creating a 'bespoke' consultation process ensured that:

- the process was more pertinent to the immediate needs of those facing redundancies
- there was a 'better ratio of representation' of representatives to employees than would be possible if the standing employee council had been used. For instance, in the case of the March 2009 redundancy situation, 13 'directly impacted' employees were elected to represent 1,000 employees.

continued on page 23

Case study: How Vodafone used training to make consultation over planned redundancies more effective

Training employee representatives on redundancy

Vodafone arranged training sessions for all those involved in the consultation on the proposed redundancies. Following the training, run by Acas, there was:

- more constructive dialogue between managers and employee representatives
- more helpful input from employee representatives
- increased communication between employees and line managers.

Consulting on redundancies is a legal requirement but the right training can make the consultation exercise much more effective. As the Vodafone manager explained:

“Clearly you’ve got to comply with the law, but what you actually really want to achieve is an employee population that you can take with you on the journey of why you’re doing something, and explore with them solutions that have a buy-in from the employee perspective, and can get a buy-in from the employer perspective, to actually improve things for the people that we’re working with.”

Resolving problems through joint working groups

What are joint working groups?

Joint working groups comprise employers and employee representatives who meet to tackle and solve problems together. These groups are similar in make-up to works councils but they are usually formed to deal with specific issues affecting the organisation, such as a high rate of employee turnover or problems with the pay system.

The emphasis is very much on joint working – with managers and representatives working together to understand issues and overcome

common problems in a non-confrontational way.

Joint working groups can:

- ✓ secure greater commitment to recommendations because worker representatives have been involved in the decision-making process
- ✓ emphasise dialogue, not conflict, by developing solutions which are acceptable to both sides
- ✓ utilise the skills and knowledge of employees
- ✓ improve relationships and attitudes.

How can joint working groups make effective decisions?

Joint working groups often make recommendations for further action. Where there is a recognised trade union these might form the basis of negotiation in collective bargaining. Where there is no recognised trade union, the recommendations may be presented to management for discussion.

In most cases it is best to arrive at these recommendations through group consensus – as opposed to decisions reached through majority voting or by the group leader alone.

Consensus decision-making is where all group members agree on a single outcome – **after** they've had chance to air their views and discuss the issues. A group reaches consensus when all members agree on a single way forward and each individual can honestly say:

- I believe that you understand my point of view and I understand yours
- whether or not I prefer this decision, I support it because it was reached fairly and openly and it is the best decision for us at this time.

How it works: joint working groups

To make effective decisions employee representatives should:

- ✓ have open access to information – this encourages cooperation, efficiency and teamwork
- ✓ generate new and innovative solutions rather than falling back on what the group has done in the past
- ✓ test the proposed course against the yardstick of their aim or objective
- ✓ assess the consequences of making particular decisions
- ✓ play devil's advocate by challenging assumptions and promoting a thorough appraisal of any suggestions
- ✓ divide complex problems – for example, start with 'what?' to do and then move on to 'how?' and 'when?'
- ✓ reconsider decisions by ongoing review of relevant information
- ✓ feel ownership of and commitment to the decisions that are made
- ✓ be patient – developing trust can take time.

Consensus is not an easy option, or a way of avoiding conflict. In this kind of decision-making:

- effective groups generate high quality ideas by accepting conflict and exploring differences of opinion amongst group members
- groups should not feel a need to establish a common view quickly, using simple methods such as majority voting or bargaining
- everyone shares information openly and listens rather than always fighting their own corner.

Some of the techniques joint working groups use to resolve problems – such as problem-solving cycles, brainstorming and cause and effect analysis – can be found in the Acas guide *How to manage change* available at www.acas.org.uk/publications.

Representation in collective bargaining

Most agreements by employers to recognise trade unions for collective bargaining are entirely voluntary but independent trade unions in organisations employing more than 20 employees have a statutory right to claim recognition. For more information visit the Central Arbitration Committee website at www.cac.gov.uk. Details of the legal rights of trade unions is given at Appendix, p32.

Pay is perhaps the most emotive issue to be discussed by employers and unions and is the single biggest cause of workplace disputes – accounting for almost half of all Acas collective conciliation cases in 2009/10. The way collective bargaining works will differ in each organisation but some of the basic steps are set out overleaf.

Example: How collective bargaining works – annual pay award

<p>The background – the nature of the employer-union relationship</p>	<p>Collective bargaining is more likely to go well and avoid industrial action if the employer and union trust each other and can work together collaboratively. Organisations with genuine partnership agreements in place (see p29) will talk to each other openly and share information. Ideally, the annual pay negotiations should throw up no surprises.</p>
<p>The offer/the claim</p>	<p>Usually the trade union will submit a pay claim – following discussions between employee representatives and their constituents – and the management will respond with an offer. This offer or claim might be triggered by a certain date set out in the negotiating agreement. Hopefully, the regular meetings between managers and union representatives have anticipated the nature of the offer or claim.</p>
<p>The role of the union representative</p>	<p>The union reps will talk to union members to gauge opinion on the offer.</p> <p>Experienced union reps with the right training and personal skills will be able to explain the offer to members, deal with unreasonable criticism and ensure members are being realistic about the offer.</p> <p>An employer needs to allow the union reps enough time to talk to their members and consult with them. Line managers are sometimes unaware of the rights of union reps and can often benefit from training.</p>
<p>Negotiation</p>	<p>Management and union reps will often question and probe each other to develop possible options for a way forward. This may focus on the parties' real needs and interests – as opposed to their stated positions. Both sides usually have an 'area for movement' where compromise can be reached.</p>

Recommendation and ballot	<p>The union reps will go back to the employer with a ‘yes’ or ‘no’. If the answer is ‘no’ the employer might say ‘what do your members want?’ Some sections of the workforce might want different things in terms of pay and conditions. They may then trade items to try and reach an agreement they both find acceptable. Once parties feel that no further change is possible through negotiation the members are then balloted by the union. The union reps usually make a recommendation for members to accept or reject the offer.</p>
Involvement of the Full Time Union Official (FTO)	<p>If the members reject the offer, the next part of the collective bargaining procedure might involve calling in the union’s full time official (FTO). The FTO can offer a reality check – for example, they might say ‘do you know what kind of offers other people are getting, this isn’t too bad’. They might also use their own experience to help negotiate slightly different terms.</p>
Dispute resolution by Acas	<p>Some organisations have a stage in their collective bargaining agreement that states that if an agreement cannot be reached it should be referred to a third party. Acas offers collective conciliation in these cases. In 2009-10 Acas received 905 requests for collective conciliation. In 94% of cases, Acas was able to assist the parties reach an agreement in their dispute or make sufficient progress that it was possible for them to reach agreement later in direct negotiations.</p> <p>Organisations can contact Acas even if it’s not part of their collective bargaining procedure. Acas will often try and seek ways of preventing future conflict – for example, by developing partnership agreements – see the Acas guide <i>Managing conflict at work</i> at www.acas.org.uk.</p>

Collective bargaining agreements do not normally establish legal relations between an employer and trade union, but those parts of the agreement that affect terms and conditions of employment can become part of individual contracts.

It is important to remember that collective agreements usually:

- apply to all employees within the specified bargaining group, irrespective of whether individuals are union members or not

- include recognition agreements
- work best if they are in writing.

What are the principles for collective bargaining?

To enable collective bargaining to operate effectively you need an agreement on:

✓ Recognition – this will include:

- a statement of management and unions' common objectives as well as their different roles and responsibilities
- grades, categories, department etc that the union or unions represent (bargaining units)
- number of trade union representatives
- policy on trade union membership
- facilities for trade union representatives
- accreditation for union representatives.

✓ Procedural arrangements – this will set down details of:

- payment of union contributions from wages (check-off) – where appropriate
- time off for trade union duties and activities (see *Acas Code of Practice 3 Time off for trade union duties and activities*)

- disclosure of information
- consultation arrangements, including the scope for regular meetings, confirmation that the trade union will be consulted in the event of a statutory obligation to do so, for example in TUPE and collective redundancy situations

- normal negotiating arrangements, including how and when issues can be raised

- who will represent the employer and the trade union in negotiations. It is important to indicate at what stage a full-time trade union official will be involved

- a disputes resolution procedure, identifying the number of stages, the scope for intervention by more senior trade union and employer representatives and whether disputes can be referred to third parties (eg Acas)

- 'status quo' or 'standstill' arrangements designed to allow the organisation to work normally while attempts are made to resolve disputes

- handling redundancies

- how agreements can be varied or terminated.

- ✓ Issues – you might want to include a list of the things suitable for collective bargaining, but this is optional
- ✓ Type of bargaining – where two or more unions are recognised, will all unions involved bargain separately or as a single unit?

Training will ensure that employer and trade union representatives have a good understanding of the factors affecting employment relations and the bargaining process. Most trade unions have training facilities for their representatives and there are a number of independent training organisations that can provide employment relations training separately for management or jointly with trade union representatives. Training is particularly important where a union is newly recognised. Union representatives – including learning representatives (ULRs) – have a right to paid time off for TUC or union accredited training.

Agreed procedures should meet the particular requirements of the organisation and should not be taken ‘off-the-shelf’. Some organisations have a number of separate agreements covering various aspects of union/management relations while others prefer a single comprehensive agreement covering both collective and individual issues. For further

information visit the Acas website at www.acas.org.uk and the Central Arbitration Committee website at www.cac.gov.uk.

The promotion of mutual interests
Relations between management and union are often conducted on the basis of pursuing a common interest in the success of the organisation. This can take the form of statements of intent to pursue a cooperative approach to formal agreements involving new structures and systems for consultation and representation. What is important is the frame of mind and the way of working rather than what the agreement might be called.

The TUC offers advice to member unions on partnership or joint working issues and has developed six principles of partnership which are:

- a shared commitment to the success of the organisation
- a commitment by the employer to employment security in return for which the union agrees to a higher level of functional flexibility in the workplace
- a renewed focus on the quality of working life, giving workers access to opportunities to improve their skills, focusing attention on improving job content and enriching the quality of work

- openness and a willingness to share information. So, for example, employers will share with unions and workers their thoughts about the future when they are at the 'glint in the eye' stage
- adding value – unions, workers and employers must see that partnership is delivering measurable improvements
- a recognition by both the union and employer that they each have different and legitimate interests.

Where attempts are being made to move from traditional adversarial employment relations to a joint working approach there is often concern on both sides about the effects of such a change.

For example management may be concerned about losing the right to manage and trade unions may worry about losing their independence and separate identity. Acas can often assist in these circumstances by helping both sides work together to improve relationships and organisational effectiveness.

Notes

1. *Inside the Workplace: first findings from the 2004 Workplace Employment Relations Survey*, ISBN: 0 85605 370 8
2. *Accompaniment and representation in workplace discipline and grievance*, Acas Research paper; Saundry, Antcliff and Jones, October 2008, ISBN: 978-0-9559264-2-6]

Appendix: *Legal rights and responsibilities*

Right:	Law:
To be accompanied	<ul style="list-style-type: none"> Workers have a statutory right to be accompanied by a fellow worker or trade union official where they are required or invited by their employer to attend certain disciplinary or grievance hearings and when they make a reasonable request to be so accompanied. This right is additional to any contractual rights.
To be consulted	<ul style="list-style-type: none"> Employers are required to consult employee representatives over planned collective redundancies and transfers of undertakings. Employers are required to consult safety representatives of recognised trade unions. Employers are required to consult on health and safety with any employees not in groups covered by trade union representatives. The employer can choose to consult them directly or through elected representatives. Employers with more than 250 employees must include in their annual report action that has been taken to inform, consult and involve employees. Management, employees or their representatives in European Community scale undertakings (or groups of undertakings) may trigger the process for setting up a European Works Council or alternative arrangements for implementing an information and consultation procedure. The Information and Consultation of Employees Regulations give employees the right to information and consultation on employment developments and substantial changes to work organisation. The Regulations apply to all businesses with 50 or more employees.

Right:	Law:
<p>The recognition process</p>	<ul style="list-style-type: none"> • The statutory process for recognition applies only to an independent trade union, or two or more independent trade unions acting together. Both Acas and the Central Arbitration Committee (CAC) encourage statutory recognition cases to be settled voluntarily wherever possible. If voluntary recognition cannot be agreed the union can apply to the CAC. The CAC will test the level of trade union support – if over 50% of the bargaining unit are members of the union the CAC will normally declare the union recognised. If not, it will hold a recognition ballot. For further information visit www.businesslink.gov.uk.
<p>Rights of recognised trade unions</p>	<p>Recognised trade unions (whether recognised voluntarily or as a result of the statutory process) have rights to:</p> <ul style="list-style-type: none"> • Information for collective bargaining purposes and on health and safety and occupational pension schemes <ul style="list-style-type: none"> ○ Information on occupational pensions principally provided by the Occupational Pensions Schemes (Disclosure of Information) Regulations 1996, but other provisions on pensions may also apply ○ Consultation on: health and safety at work redundancies, where it is proposed to dismiss 20 or more employees at one establishment over a period of 90 days or less business transfers ○ Paid time off for officials to carry out duties concerned with negotiations with the employer and training relevant to those duties ○ Reasonable time off (which need not be paid) for trade union members during working hours to take part in the activities of the union

Right:	Law:
Rights of recognised trade unions	<ul style="list-style-type: none">• Those trade unions recognised by the statutory trade union recognition process also have legal rights to:<ul style="list-style-type: none">○ Collectively bargain about pay, hours, and holidays – as a minimum○ Consultation on training○ Not to be derecognised for at least three years – does not apply to voluntary recognition agreements which are subject purely to agreement of the parties• Collective or ‘Workforce’ agreements may govern the application of some aspects of the Working Time Regulations 1998.

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Notes

Information in this booklet has been revised up to the date of the last reprint – see date below. For more up to date information please check the Acas website at www.acas.org.uk.

Legal information is provided for guidance only and should not be regarded as an authoritative statement of the law, which can only be made by reference to the particular circumstances which apply. It may, therefore, be wise to seek legal advice.

Acas aims to improve organisations and working life through better employment relations. We provide up to date information, independent advice, high quality training and we work with employers and employees to solve problems and improve performance.

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